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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 2002-7-3

**Action on IATA Agreement
Issued by the Department of Transportation
on the 1st day of July, 2002**

Served: July 5, 2002

Application of the International Air
Transport Association for an exemption
under 49 U.S.C. 40109 from the
conditions of CAB Order 68-7-55
For Passenger Services Conference Action

Docket OST-2002-11798 - 2

ORDER GRANTING EXEMPTION

By application filed March 7, 2002, the International Air Transport Association ("IATA") requests a partial exemption from one of the conditions the Department has imposed upon its "Procedures for the Conduct of the IATA Traffic Conferences" ("bylaws"). That condition requires IATA, through its U.S. air carrier members, to submit all traffic conference resolutions, recommended practices, and any other agreements produced by any of the traffic conferences to the Department of Transportation for individual review, approval and, if requested and granted, antitrust immunity, before they may be declared effective by the conference and implemented by its members.¹

Specifically, IATA requests an exemption from this condition to the extent necessary to permit it to adopt and implement 15 resolutions and recommended practices (RPs) of its worldwide Passenger Services Conference (PSC), without filing for prior approval by the Department and without immunity from U.S. antitrust laws. The list of resolutions and recommended practices is specified in the Appendix to IATA's application of March 7, 2002, and in the Appendix to this order.²

¹ As IATA notes, since the U.S. first approved and immunized the IATA traffic Conference carrier coordinating system in 1946, the Civil Aeronautics Board and its successor, DOT, have enforced general procedural conditions regulating the various tariff, agency and procedures conferences. Reflecting a then-existing statutory requirement that U.S. carriers file for advance government approval every contract or agreement with another carrier affecting foreign air transportation, such a condition was expressly imposed on the bylaws. See, e.g. CAB Order E-3888, February 9, 1950. As last formulated in CAB Order 68-7-55, July 12, 1968, and reaffirmed by DOT in Order 85-5-12, condition #2 requires that "all recommended practices, agreements and resolutions adopted by IATA and each of its conferences and permanent conference committees" be submitted to the CAB/DOT for "appropriate action," which has been construed uniformly as prior review and approval before any implementation by members. The statutory filing requirement has since been made voluntary. See 49 U.S.C. 41309. Unfiled and/or unapproved agreements have no antitrust immunity.

² IATA is not requesting exemption from the Department's filing and prior-approval conditions as they relate to agreements of IATA's tariff or agency conferences.

In support of its application, IATA states that this is the second PSC exemption application it has filed. In Order 2002-1-15, January 29, 2002 (Docket OST-2001-9575), the Department granted IATA's first exemption request, which identified thirty-seven competitively benign PSC resolutions and RPs that could be maintained without immunity from U.S. antitrust laws. In that order, the Department concurred that much of the work performed by the PSC involves technical standards and procedures that do not implicate competition policy or other public interest issues and authorized those thirty-seven resolutions and RPs, known as the "first tranche," to forego prior Department review and approval. IATA believes that the same circumstances apply to this "second tranche" of Resolutions and RPs listed in the instant application, and it plans to submit an exemption application for a third tranche of PSC resolutions and RPs.

IATA anticipates that all PSC resolutions and recommended practices exempted from filing that have previously been approved and immunized would retain their immunity until they are subsequently amended and the amendments have been declared effective by IATA. At that point they would no longer have antitrust immunity or need subsequent review. Changes to other resolutions and recommended practices will continue to be filed for review and approval in the traditional way.

IATA notes that seven of the RP's in the application have been amended at the October 2001 annual PSC and submitted to the Department for approval and immunity in Docket OST-2002-11290.³

Decision

We have decided to grant the exemption application for the resolutions and recommended practices included in IATA's application. We find the exemption as granted, subject to certain understandings noted below, to be in the public interest.

We are approving the exemption application for the same reasons we approved IATA's "first tranche" application.

Our longstanding conditions have required IATA to file every change to PSC resolutions and recommended practices, whether or not their subject matter presented any policy issues. Many of these amendments involved material such as revalidations of agreements without change upon their expiry date, rescissions, and purely editorial changes. Our conditions have also prompted IATA to request immunity for every agreement filed, whether or not such agreements would have presented problems or raised questions under U.S. antitrust laws. While the CAB and the Department have maintained that all tariff conference actions were potentially significant and should be subject to prior oversight, the case for reviewing every agreement of the services and agency conferences is less compelling.⁴ Most of the work of the services conferences involved technical standards and procedures, and seldom raised public interest issues. The Air Transport Association of America (ATA) has conducted similar work for decades without the benefit of government approval of antitrust immunity. Yet our blanket filing/approval conditions, which applied equally to all of IATA's

3 RPs 1709,1711,1712,1713,1715,1717 and 1718. We will deal with the agreement from the October 2001 PSC, including amendments to those seven RPs, by separate order.

4 The CAB disapproved IATA resolutions jointly setting commissions to/from the U.S. in 1978, and in 1981 the CAB denied antitrust immunity to agency conferences affecting carrier-agent relations within the U.S. U.S. carriers have since then refrained from any participation in agreements fixing or recommending travel agent commissions paid by airlines, even outside the U.S. IATA's non-U.S. agency conference agreements, therefore, normally present no controversial issues for U.S. authorities.

traffic conferences activities, have forced a time-consuming Department review of many changes of little or no regulatory interest. This process often delays implementation by IATA of more efficient industry procedures that have no negative impact on competition or consumers. IATA has made an extensive study of its activities relative to its members' needs, and concluded that it no longer needs to seek antitrust immunity for many of the trade association and interline facilitation actions, which it automatically sought when forced to submit agreements for prior U.S. approval.

The resolutions and recommended practices for which IATA now seeks a filing exemption are generally among those which have been approved consistently in the past by the CAB and DOT; which have not presented consumer protection, competitive or other problems under aviation regulations and policy; and which have been identified by IATA as not raising legal difficulties under U.S. antitrust laws. We are aware of no changed circumstances which might affect these conclusions now or in the future. It is our judgment that the antitrust laws are a sufficient protection against abuse of the discussion authority which DOT has continued to give to the services conferences with regard to the subject matter of these agreements.

The operation of the exemption will be in the manner requested by IATA, as noted above. Upon service of this order, the 15 listed resolutions and recommended practices will no longer have to be filed for review. All existing PSC resolutions will continue to have immunity until future amendments are declared effective by IATA.

Underlying our willingness to undertake this exemption procedure are several necessary understandings, which are consistent with IATA's application. First, the exemption covers only the specific resolutions and recommended practices identified in the application, and their present subject matter. The substantive content in them has remained consistent, notwithstanding occasional textual changes. However, if resolutions are combined, or changed significantly in terms of subject matter, the Department must have sufficient information to be able to determine whether they continue to fall under the exemption.⁵ The Department will monitor the exemption procedure to assure that it is working as intended. Second, the Department has determined that there is an effective and efficient method for the Department and the public to know whether resolutions covered by the exemption has been amended, and thus have no antitrust immunity. IATA has stated that it intends to file a third tranche of PSC resolutions and recommended practices for exemption. If such an application is approved, the filing in the DOT public docket will identify for interested parties which resolutions/recommended practices will no longer be reviewed. At the same time, IATA will continue to file all new resolutions/recommended practices in a DOT public docket, for prior review and approval in the case of those agreements not exempted, and "for information," in the case of those agreements that have been exempted.⁶ IATA will identify separately in its application all exempted resolutions whose changes are filed only "for information." This methodology will provide notice to the Department and the public of any changes to exempted resolutions, which no longer have immunity. Like other applicants, IATA files its agreements electronically in our public dockets, and these are available via the internet.

⁵ IATA should assign new identification numbers to new, significantly changed, or consolidated resolutions and recommended practices, and either file an amended exemption application for them or file them for specific approval and immunity.

⁶ IATA files with the Department the same complete package of text amendments, revalidations or other changes to agreements, as well as minutes of the meetings, that are sent to the carrier members from Geneva.

ACCORDINGLY,

1. Consistent with this order and the understandings expressed in it, we grant the application of the International Air Transport Association filed in this docket for an exemption from condition #2 imposed on IATA's Procedures for the Conduct of the IATA Traffic Conferences, Agreement 1175, as amended, by Order 68-7-55, to the extent that IATA need not file the Passenger Services Conference resolutions and recommended practices identified in the Appendix to this order for review and approval by the Department prior to a declaration of effectiveness by IATA and implementation by IATA members;
2. Agreements exempted under paragraph 1 will retain any existing antitrust immunity, subject to conditions imposed, until they are amended or modified and those amendments or modifications are declared effective;
3. This exemption may be revoked in whole or in part, at any time; and
4. This order will be served on the International Air Transport Association and published in the Federal Register.

By:

Read C. Van De Water
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web
http://dms.dot.gov/reports/reports_aviation.asp*

Docket OST-02-11798

<u>Resolutions and Recommended Practices</u>	<u>Descriptions</u>
744 (including attachments)	Local Baggage Committees
764	Arrival and Departure Times
765	Interline Connecting Time Intervals- Passenger and Checked Baggage
1702	Information on Airport Passenger Services Charges
1703	Standardisation of Cabin Door Designators
1704	Office Function Designators for Passenger and Baggage Handling
1705	Standardisation of Traffic Handling Message Texts
1709	Request List Message
1710	Standardisation of Seat designators
1711	Seats Protected Message (SPM)
1712	Seats Occupied Message (SOM)
1713	Seats Available List Message (SAL)
1715	Passenger Service Message
1717	Teletype Passenger Manifest
1718	Passenger Transfer Message (PTM)